IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.219 of 1993.

Dated of Decision: November 20, 2007.

State of H.P. …… Appellant.

Versus

Nirmal Singh and others. ……. Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant :Mr. D. S. Nainta, Deputy Advocate General.

For the Respondents :Mr. Ajay Sharma, Advocate, for respondent No.1.

Mr. I.D.Bali, Sr. Advocate with Mr. Virender Bali, Advocate, for respondents No.2 and 3.

Surjit Singh, J. (oral):

Heard and gone through the record.

Respondents Nirmal Singh, Kul Prakash and Shiv Kumar were tried for offences, punishable under Section 304 and 201 read with Section 34 of the Indian Penal Code by the Sessions Court, on the police report. After the trial all of them were acquitted, vide judgment dated 27.2.1993. The present appeal, by the State, is directed against this judgment of acquittal.

Prosecution version as per evidence on record may be summarized thus. On 19th September,1990,

Whether reporters of local papers may be allowed to see the judgment?

deceased Jalam Singh and PW-8 Devi Singh started for village Bakla, where a sister of deceased Jalam Singh lived. When they reached village Garh, around 9.00 in the night, dogs started barking at them. Deceased hurled abuses at the dogs, which caused annoyance to respondent Nirmal Singh. When the deceased allegedly did not desist from hurling abuses, despite being asked by respondent Nirmal Singh not to do so, the latter picked up a danda and hit the deceased on his head, as a result of which he sustained fracture of his skull leading the hemorrhage of brain. The deceased died on the spot. PW-8 Devi Singh got scared and ran away. Thereafter with the help of other two respondents, respondent Nirmal Singh threw the dead body down the precipice, with a view to destroying the evidence of murder.

Devi Singh (PW8) informed Des Raj (PW10), a brother of the deceased and PW-22 Janat Singh, about the incident on 21st September, 1990. In the meanwhile, dead body was spotted by some persons on 20th September, 1990. One Prithu has identified the dead body to be of Jalam Singh. He informed the father of the deceased, namely PW1 Dhani Ram, who then went to the Police Station, Bharmour and made a statement under Section 154 of the Code of Criminal Procedure, Ex.PA, wherein he expressed

the suspicion against PW8 Devi Singh, because the deceased had left the house in the company of the said witness on 19th September, 1990. Another reason for his expressing suspicion against PW8 Devi Singh was that he had been informed by Prithu that he had seen him (PW8) Devi Singh going towards his house, in a perplexed state.

Post-mortem examination of dead body was conducted by PW-18 Dr. Balbir Kumar, who opined the cause of death to be the head injury and several other injuries noticed on the dead body.

Trial court has acquitted the respondents, holding that testimony of PW-8 Devi Singh cannot be believed without corroboration, because he himself was a suspect and also because his conduct subsequent to the commission of crime was quite unnatural. The trial Court has also observed that the evidence with regard to the recovery of the danda, the alleged weapon of offence, at the instance of respondent Nirmal Singh is doubtful and in any case, the danda does not stand connected with the commission of crime, in view of the report of the Chemical Examiner that the origin of the blood stains noticed on the danda could not be ascertained. PW-8 Devi Singh testified that when Jalam Singh was on the village path, a blow of danda was given on his head by

Nirmal Singh, he ran away from the spot to save his own life and spent the night somewhere in the village. He did not specify the place where he spent the night. He stated that next morning, i.e. on the morning of 20th September, 1990, he went to village Bakla, where the sister of the deceased lived and there, he met his friend named Saili. He did not inform his friend Saili about the occurrence nor did he go to the house of the sister of deceased Jalam Singh to inform that her brother had been done to death by respondent Nirmal Singh. It was only on 21st September, 1990, i.e. to say two days after the commission of crime that for the first time he informed PW22 Janat Singh that Jalam Singh has died. He did not disclose to this witness how had he died. The same day, he met PW-10 Des Raj, a brother of the deceased and told him that the deceased had been killed by respondent Nirmal Singh. No explanation has been offered by PW-8 Devi Singh for his having not informed the father of the deceased, at all, or any other relative of the deceased about the alleged murder of the deceased by Nirmal Singh respondent, soon after the occurrence and for taking two days for disclosing the fact of death of Jalam Singh to PW22 Janat Singh, for the first

time and even then not disclosing how did the deceased die.

It is quite likely that PW-8 Devi Singh informed PW-22 Janat Singh and PW-10 Des Raj, a brother of the deceased about the death of Jalam Singh only after coming to know that dead-body of Jalam Singh has been spotted and identified and a report had also been made to the police by the father of the deceased, wherein he was named as a suspect.

Statement of Devi Singh (PW8) was recorded by the police, for the first time on 24th September, 1990. Even though, according to PW-10 Des Raj, he had been informed by PW-8 Devi Singh on 21st September, 1990 that the deceased had been killed by Nirmal Singh, no explanation has been offered by the prosecution why the statement of Devi Singh (PW8), the sole alleged eye witness of the occurrence had not been recorded till 24th September, 1990.

Possibility of the deceased having had a fall down the precipice can also not be ruled out. It may be noticed that according to PW-8 Devi Singh the incident had taken place on a path in the village. No blood or any other sign of violence, on the path, was noticed by the police. The blood stained earth and grass were taken into

possession by the police from the site where the dead body was lying vide memo Ex.PC. Report of the Chemical Examiner, Ex.PO, shows that alcohol was found in the stomach and small intestine and its contents as also in the liver, spleen and kidney, which were sent to him in two separate jars, for chemical examination.

There is no evidence, at all as regards the charge under Section 201 of the Indian Penal Code.

In view of the above stated position, we find no reason to interfere with the judgment of the trial court, which is based on proper scrutiny. Hence, the appeal is dismissed.

(Surjit Singh)
Judge

November 20,2007. **(Surinder Singh)**
(Pds) **Judge.**